

Seven Steps to Hell: the Catalan Conflict in Full Escalation Mode

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We are having an unusually hot October in Barcelona. Maximum temperatures are rising to 25 degrees Celsius most days. But climate is not the only hot thing here in Spain at the moment. Every day things are getting worse, politically and socially. Before the intervention of President Puigdemont in the Catalan Parliament on Tuesday October 10th, when many were expecting him or the parliament to declare the independence of Catalonia, we got the impression that we were going to fall off a cliff. The suspension of that declaration gave us some fresh air. Some signals from both the Spanish and the Catalan governments made us think that the conflict was de-escalating and, perhaps, hopefully, some communication channels were re-opening, and negotiations might finally emerge. But those hopes vanished last week as Mariano Rajoy's government started taking decisive action in his fight against the Catalan secessionists, through several moves that could be qualified as terrible strategic mistakes, as well as legally dubious and hardly legitimate. Mr. Rajoy seems to be responding illegitimately to the illegitimacy of Catalan secessionism.

We all are in a much worse situation today. Conflict continues to escalate. Peaceful, reasonable solutions evaporate quickly. This, of course, damages both, or perhaps we should say: all sides, because there are clearly more than two. And the main damage has been done to democratic legality and legitimacy.

Legality, legitimacy, strategy

Spain, and more specifically Barcelona, used to resemble a paradise. But we are descending into hell. Seven steps towards the inferno have been taken in the last six weeks, all of them of the highest legal and political relevance:

1.

As I explained in [two previous](#) posts, the Catalan Government made the first decisive move towards illegality and democratic illegitimacy. Secessionist political parties in the Catalan parliament passed the Self-Determination Referendum Act 19/2017 and the Legal Transition and Foundational Act 20/2017 in September 6th and 7th. These two Acts were not only plainly unconstitutional, but they intended to create a separate, proto-constitutional regime for Catalonia. They caused a major institutional break-up, and constituted a constitutional coup d'état in the technical, Kelsenian sense, although they were immediately suspended by the Spanish Constitutional Court. These Acts weren't backed by sufficient popular support – the parties that passed them got less than 48% of the votes in the election of 2015, and opinion polls reported that the actual support for that unilateral strategy for break-up was even less. The other parties in the Parliament, representing on this a clear majority of Catalans, were unable to stop the passage, but expressed their outrage.

It is relevant also that on the receiving end of this break-up was a well-established democracy that meets any international standard of legitimacy: Spain. These two Acts were not only illegal, but democratically illegitimate. In addition to that, passing those revolutionary laws was also strategically dangerous and reckless, since everyone knew that this move was not going to deliver independence, but would instead trigger a strong reaction from the Spanish government and the loss of the confidence and support from the international community. For all this, the Catalan government bears the full responsibility.

2.

Despite the intervention by the Constitutional Court, the Catalan government continued with the organization of the illegal referendum. They bought the ballot boxes, which were hidden for several weeks to avoid being seized by the police. They tried to constitute an electoral census and installed an electoral commission to supervise the

referendum process and the polling stations. All those acts were illegal according to the Constitutional Court. The Spanish government reacted by force and unleashed the police and the Public Prosecutor Office, which in Spain depends on the central government, against secessionist civil associations, political parties, some sectors of the Catalan government, and even local newspapers, in some cases without proper judicial authorization. On the legitimacy front, actions taken by both sides were an attempt to unilaterally impose certain views to the other part instead of engaging in democratic dialogue and negotiation. Strategically, they were both a disaster. The Catalan unilateral strategy to call for the referendum, disobeying the law and the Constitutional Court, produced a very strong opposition and negative opinion from the rest of Spain that is counterproductive for seeking a negotiated agreement. But the Spanish attempts to prevent the referendum only on the basis of judicial decisions and police action just reinforced the secessionist outrage and determination to go on with a unilateral strategy.

3.

October started with an illegal and illegitimate referendum that the Spanish government and police were unable to prevent or stop. The secessionist movement proved to be very well organized and highly efficacious, even if they had to organize everything in secret, trying to escape the watchful eyes of the Spanish police and the intelligence service, CNI. But the illegality and illegitimacy of the referendum could hardly justify the disastrous reaction by the Spanish government to brutalize voters. It is obvious to any observer that police came to the polling stations with the order to seize ballot boxes and prevent people from casting their votes at any cost. And that repression was in effect disproportional (voters were unarmed, practicing only passive resistance; and even seizing the ballot boxes was unnecessary to the end of rendering the result of the mobilization illegitimate).

For that reason many have qualified the police action as illegal. And, we should add, it was also probably illegitimate from a democratic point of view. Any advanced democracy must make allow civic protest and mobilization, which is all what people did in the end in polling stations in Catalonia. Restrictions, unless they are necessary for, safety or other valid reasons, are democratically illegitimate. Whatever the Spanish government said to justify its deeds, it has violated an informal, but important, golden rule of any advanced democracy: police should never, for any reason, bludgeon unarmed, peaceful old ladies.

4.

Immediately after that dramatic day in Catalonia, on Monday 2nd, the European Commission issued a quick [official statement](#) saying that the conflict was “an internal matter for Spain”, and that they fully trusted “the leadership of Prime Minister Mariano Rajoy to manage this difficult process in full respect of the Spanish Constitution”. Secessionist and non-secessionist Catalans never expected the European Union to just look the other way and to refuse to come to the help of fellow Europeans who were stuck in a complex and very serious political conflict. It is not that they expected the EU to defend the secessionist aspirations of a minority of Catalans, especially when they had broken, first, the constitutional legality in Spain. But, instead of taking sides with the central government at any rate, the EU could have taken a position of neutrality and broker a peaceful and legal solution for the conflict. This is what, as a European citizen, I would have expected from the EU institutions: some internal European solidarity. If they don't do it for that right reasons, at least they should have done it for their own strategic interest, since it is evident that this crisis will direct impact the Catalan and Spanish economy, and indirectly the Euro zone.

5.

October 3rd brought another big disappointment. The Spanish King gave a broadcasted address and proclaimed not only his support of the Spanish constitution and unity, as everyone would have expected, but of Mr. Rajoy's harsh strategy too. The Monarch's main constitutional role in Spain, besides representing the state on the international stage, is “to arbitrate and moderate the normal functioning of institutions” and in political conflicts (Article 56.1 Spanish constitution). True, Catalan secessionists had broken with constitutional legality first. But taking the side of one particular actor in a conflict that is not democratically illegitimate per se, the King was not helping so solve the conflict, but deepening it. The King represents all Spaniards, also those who want to secede from Spain and challenge his (symbolic) authority. And, more clearly, he should represent the very large group of Spaniards and non-secessionist Catalans who condemned the police aggressions and demand a negotiated

agreement. By dismissing negotiation and ignoring the police repression, he aligned with the harsher reactive positions in Spain. Some people in Madrid were very happy after his address. A vast majority of Catalans, and many other Spaniards, were depressed and disappointed.

Interlude: a step up?

Then, suddenly, a few signs seemed to indicate a de-escalation of the conflict and allowed some of us to turn into a more optimistic view. The first one was President Puigdemont's broadcasted address on October 4th. Many feared he was going to declare independence right away, but he simply announced his intervention in the Catalan parliament for the following week, and openly called for a negotiated agreement, including any sort of international mediation. Many initiatives were actually working on that moment to bring very prestigious names such as Pope Francis, Kofi Annan and The Elders, and others, to the table. Mr. Rajoy's government reacted with caution, asking Puigdemont not to declare independence in the Parliament, and postponing the activation of Article 155 – the possibility to intervene in, or suspend, the Catalan autonomy. And on October 10th, when Puigdemont addressed the Catalan Parliament, he didn't declare independence, but actually suspended it "for some weeks". That he didn't declare independence was not immediately obvious after his address, and even after his first letter to Rajoy sent on October 16th, in response to a clear request from Rajoy to clarify the events of the 10th. But that was the most widespread interpretation, confirmed by Puigdemont himself in his second letter to Rajoy on Thursday 19th. Mr. Rajoy's government postponed again the activation of Article 155. All those moves created for a while some room for hope. Those were days in which people could breathe a bit easier.

6.

But the heat soon returned to Barcelona. The sixth step into the hell was taken on the same Monday 16th, when a judge ordered the detention of Jordi Cuixart and Jordi Sánchez, who were sent to jail in provisional imprisonment. They were the leaders of the two biggest secessionist civil associations, and responsible for many peaceful mobilizations across the last years, like the massive, and festive, marches for September 11th, the national day in Catalonia. They are, of course, very popular in the Catalan society. Those who know them well say they are very moderate, peaceful, and reasonable people. They are indicted for sedition due to their involvement in the protests of Barcelona in September 20th and 21st. And, leaving aside now whether there is evidence showing their culpability on such crime, the truth is that the decision of issuing remand or pretrial detention for them is very hard to justify from a legal point of view.

Spanish law demands three conditions to be met before a judges can order pre-trial detention – the risk of absconding, the prevention of evidence destruction, and preventing them from committing future crimes. None of those seems to apply here. It is not even clear whether the special court that has decided their imprisonment, the *Audiencia Nacional*, is even competent for this kind of crimes. Thus, the legality of that decision has been widely contested by many experts. Its legitimacy is doubtful, too: The court acted on the request of the Public Prosecutor, who answers to the central government. Prosecuting two leaders of a secessionist social movement that has been so peaceful and civic all these years, while no secessionist political leaders, like President Puigdemont, are not even being investigated, does not look like a very good idea. But asking for them provisional imprisonment, as if they were two murderers or terrorists, is just infamous, especially when there is no parallel strategy to try to find a negotiated agreement with the secessionist movement. Similarly, this move seems catastrophic from the strategic point of view, since it has outraged even more the Catalan society, including many non-secessionists.

7.

Finally, things got even worse on Saturday 21st. The day before, the Spanish socialist party, PSOE, had announced an agreement with the governing Partido Popular and Ciudadanos, that suggested that there was going to be a weak version of intervention into Catalan autonomy provided by Article 155 of the Constitution. That Article, copied from the German constitution, has never been applied before in Spain, and it is not clear what content it should have, and what constitutional limits, if any, would constrain the central government in enforcing it. But, on Saturday, Mariano Rajoy announced the concrete initiatives he was going to propose to the Senate, the body that has to authorize the activation of the Article, and revealed that what they wanted was actually far

from a weak version of Article 155 measures. These concrete initiatives include: removal of the President and all the members of the Cabinet of the Catalan government and replacing them with delegates of the central government; control over certain public services like the Catalan public broadcast company or the education system; snap elections in Catalonia in a period of six months or so. In sum, if the central government is authorized by the Senate to go ahead with such an interpretation of Article 155 – as it is expected to happen, since PP controls the chamber –, they will take over completely the power in Catalonia. Most Catalans, including many non-secessionists, think this will be a catastrophe. Many constitutional lawyers in Spain have written op-ed articles in the last few days stating that such hard 155 is probably unconstitutional, since it goes beyond any constitutional limits and is also disproportional to the harm that is to prevent. There has been no sufficient democratic deliberation in Spain about how that Article should be interpreted. And, undoubtedly, this harsh turn in the central government's general strategy can be seen as a strategic mistake, since, once more, it is unifying Catalans – including non-secessionist ones – in their resistance against Mariano Rajoy's management of the crisis and in their defense of Catalan very old political institutions.

What's Next? Two steps more

Step by step, we are approaching hell. And every day the possibility of finding a satisfactory solution to the conflict seems more unlikely. Barcelona has never been hotter in October than it is now. So what's next? At least the next two steps down seem quite predictable.

First, President Puigdemont has announced he will address the Catalan Parliament again, on Thursday 26th or Friday 27th. He also has shown his determination to talk before the Spanish Senate on one of those days, and we still don't know what will happen first. Most likely, the Catalan Parliament will vote and declare the independence of Catalonia, and it will call for constituent elections. If the secessionists do this, they will put themselves at a different level of illegality and democratic illegitimacy. And things might be, for then, at a point of no-return.

Second, if this in fact happens, PM Rajoy will continue with the activation of Article 155, by asking the Senate on Friday for the approval of the announced initiatives. Secessionists have already stated that they will call Catalans to peacefully resist the enforcement of Article 155 "in defense of their institutions and self-government". Then we will have finally arrived at hell. There will be mass riots on the streets. A new civil war in Spain is not a possibility, if only because one side has no guns. But legality and legitimacy would go up in flames ignited by irresponsible and strategically blinded politicians and their accomplices on all sides, in Barcelona, Madrid and Brussels. October will be, to (mis-)quote T.S. Eliot, Barcelona's cruelest month.

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